NHS
Oldham
Clinical Commissioning Group

DRAFT CHOICE AND EQUITY POLICY
NHS OLDHAM CLINICAL COMMISSIONING GROUP

AUGUST 2019

1. FOREWORD

1.1 This draft policy was approved for consultation by the CCG Clinical Committee on 15-08-2019.

2. EXECUTIVE SUMMARY

2.1 This policy sets out the commissioning principles that the CCG will work to when commissioning individual packages of care for patients eligible for NHS Continuing Healthcare (CHC) funded by the NHS[1]. It explains how the CCG will commission care in accordance with the National Framework for NHS Continuing Healthcare and NHS- funded Nursing Care (October 2018, revised) ("national framework") taking into account the legal requirement for the CCG to act efficiently, effectively and fairly in allocating its limited resources between all of the patients for whom the CCG has commissioning responsibility.

2.2 This policy applies to all new patients who are eligible for CHC, and in a few cases to existing patients whose care needs have changed considerably since their last CHC review. It does not apply to:

I. Children under the age of 18.
II. Individuals who are assessed as needing 'fast-track' CHC.
III. Section 117 aftercare under the Mental Health Act.

The policy has been developed to ensure that:

2.3 Any package of care which is offered to be commissioned by the CCG is sufficient to meet the reasonable requirements of an individual who is eligible for CHC.

2.4 As far as is reasonably practicable, a person-centred approach is taken by the CCG in making decisions about a care package to be funded by the CCG for that individual, taking into account choices expressed by the individual, their family or a representative.

2.5 Decisions are made in a way that is fair, balancing the CCG's duties to the individual and to all the other patients for whom the CCG has commissioning responsibility.

2.6 Where a person qualifies for CHC, the CCG has a duty to offer a package of health

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and social care services that meets the individual's assessed health and associated social care needs in a way that is considered reasonable. The duty to make and maintain the offer and, if accepted, to commission care in accordance with the offer, continues for as long as the individual is eligible for CHC.

2.7 The CCG has a statutory duty to break-even financially. When making decisions about commissioning services, the CCG must balance a range of factors including individual choice and preferences, quality, safety and value for money. Throughout the decision-making process, the CCG needs to recognise the need to achieve best value in its use of financial resources, in order that it can share finite NHS resources equitably across all patients for whom it has commissioning responsibility.

2.8 In all instances, the CCG will need to satisfy itself that any health and social care services that are to be commissioned by the CCG for an individual will be provided in a location which is:

I. Clinically appropriate to providing the package of health and social care which the CCG has assessed is reasonably required to meet the individual's assessed health and associated social care needs.
II. Able to provide a safe and sustainable package of care.

2.9 In most circumstances, CCG staff will work with the individual and/or their family or representative to seek to identify a range of potential locations and care options, which are appropriate to meeting the individual's assessed needs. The CCG will communicate those potential options to the individual and any representative identified by the individual.

2.10 Under this policy, the CCG will generally use home care providers and care or nursing home providers that it has assessed as able to meet procurement and contractual requirements.

2.11 The CCG will generally not fund a care package in a person's home if the cost of doing so is more than 10 per cent higher than providing the same care in a care or nursing home. In addition, an individual or their family or representative has the right to ask that their package of care is provided in a care or nursing home that is not a preferred provider. The CCG will generally not fund a placement at a care or nursing home if its fees are more than 10 per cent higher than a suitable preferred provider.

2.12 The CCG will take account of an individual's views and wishes regarding where their care package is provided, when determining whether their case is exceptional and justifies a higher cost being incurred to provide care. This will include considering an individual's particular reasons and family circumstances, and whether there are very compelling circumstances. However, in reaching this decision the CCG must be satisfied that the proposed overall cost of the care package is proportionate and a justifiable use of CCG funds in comparison to the cost of commissioning a package of care for the individual in another location.

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3 CONTINUING HEALTHCARE POLICY, THE NATIONAL FRAMEWORK FOR NHS CONTINUING HEALTHCARE and THE DHSC'S NATIONAL FRAMEWORK SAYS:

3.1 "Where an individual is eligible for NHS Continuing Healthcare, the CCG is responsible for care planning, commissioning services, and for case management. It is the responsibility of the CCG to plan strategically, specify outcomes and procure services, to manage demand and provider performance for all services that are required to meet the needs of all individuals who qualify for NHS Continuing Healthcare. The services commissioned must include ongoing case management for all those eligible for NHS Continuing Healthcare, including review and/or reassessment of the individual's needs." (Paragraph 165 of the national framework)

3.2 "Where a person qualifies for NHS Continuing Healthcare, the package to be provided is that which the CCG assesses is appropriate to meet all of the individual's assessed health and associated care and support needs. The CCG has responsibility for ensuring this is the case, and determining what the appropriate package should be. In doing so, the CCG should have due regard to the individual's wishes and preferred outcomes. Although the CCG is not bound by the views of the local authority on what services the individual requires, any local authority assessment under the Care Act 2014 will be important in identifying the individual's needs and in some cases the options for meeting them." (Paragraph 172 of the national framework)

4 CONTEXT

4.1 "NHS Continuing Healthcare" means a package of continuing care arranged and funded solely by the NHS where the individual has been found to have a 'primary health need' as set out in the national framework. The actual services provided as part of that package must be seen in the wider context of best practice and service development for each client group. Eligibility places no limits on the settings in which the package of support can be offered or on the type of service delivery.

4.2 The concept of a 'primary health need' has been developed. Where a person's primary need is a health need, the NHS is regarded as responsible for providing for all their needs, including accommodation, if that is part of the overall assessed need, and so they are eligible for NHS Continuing Healthcare.

5 KEY PRINCIPLES

5.1 Where a person qualifies for CHC, the CCG has a duty to offer to provide a package of health and social care services to meet the individual's assessed health and associated social care needs in a way that is considered reasonable.

5.2 Any assessment of a care option will include the individual's psychological, emotional, personal, social and developmental needs and the impact on the home and family life, as well as the individual's care needs. The outcome of this assessment will be taken into account when arriving at a decision.

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5.3 The CCG is committed to commissioning care services that meet quality of care standards and that evidence value for money.

5.4 Application of this policy will ensure that decisions about CHC care will:

I. Be robust, fair, consistent and transparent in its decision-making.
II. Be based on the objective assessment of an individual's clinical need, safety and (where an individual lacks mental capacity to make decisions about their care) their best interests.
III. Have regard for the quality, safety and appropriateness of care for the individual and the staff involved in the delivery.
IV. Involve the person and their family or representative, wherever possible.
V. Take into account the need for the CCG to allocate its financial resources in the most cost effective way for its entire population.
VI. Support choice to the greatest extent possible in view of the above factors.

5.5 The CCG will consider the appropriateness of funding care services from a variety of care settings, which may include an individual's own home or a care or nursing home. The CCG has a duty to make a reasonable offer of care to a person with CHC needs in order to meet their assessed needs.

5.6 The level of care is determined by a comprehensive, multi-disciplinary assessment of an individual's health and social care needs. This assessment contributes to the decision-making process when determining eligibility for NHS funded CHC. An individual or their family or representative cannot make a financial contribution to the cost of the care identified by the CCG as required to meet the individual's needs. However, an individual has the right to decline NHS services and make their own private arrangements.

5.7 Access to NHS services depends upon an individual's clinical need and not their ability to pay. The CCG will not charge a fee or require a co-payment from any NHS patient in relation to their assessed needs. The principle that NHS services remain free at the point of delivery has not changed and remains the statutory position under the NHS Act 2006. The CCG cannot allow personal top-up payments to a NHS funded Care package, where the additional payment relates to services assessed as meeting the needs of the individual and covered by the fee negotiated with the service provider (for example, the care home) as part of its contract with the CCG.

5.8 However, where service providers offer additional services which are unrelated to the individual's assessed CHC needs; the person may choose to pay for these additional services themselves.

5.9 Examples of services that will in most cases fall outside NHS provision include hairdressing, aromatherapy, beauty treatments and entertainment services. However, such services can also include additional healthcare services that the CCG has assessed are not reasonably required and therefore will not be funded by the CCG. Where such services are available, the individual will be advised by the

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CCG about the options available to voluntarily enter into a separate agreement with the care provider for the provision of the services or about the availability of those services by the NHS, e.g. via community services.

5.10 Where more than one suitable care option is available (such as a care or nursing home package and a home care package) the total cost of each package will be identified and assessed against the overall cost effectiveness of comparable alternatives. While there is no set upper limit on the cost of care, the expectation is that the most cost effective option that meets the individual's assessed needs will be commissioned.

5.11 The CCG will make the final decision about the location of individual CHC packages. The CCG will consider the views of the individual and their family or representative as appropriate and act on all reasonable requests to the best of its ability.

5.12 The NHS discharges its duty to individuals by making an offer of a suitable care package whether they choose to accept the offer or not.

6. CONTINUING HEALTHCARE FUNDED CARE OR NURSING HOME PLACEMENTS

6.1 Where a person has been assessed as needing placement within a care or nursing home, the CHC team operates an agreed rate with Providers. The expectation is that individuals requiring placement will have their needs met in a home with an agreed rate however the individual has a right to ask that their care package is not provided within one of these homes.

6.2 The CCG's duty is to meet the assessed needs of the person. The person has a right to ask for a particular package of care, or they, or their family or representative, may wish for a care or nursing home outside of the CCG's preferred providers. The CHC team will consider this option, as long as the fee for the bed is not more than 10 per cent higher than the fee agreed with preferred provider care or nursing homes, and the home can meet the patient's assessed care needs

6.3 The CCG will generally not fund a placement at a care or nursing home if its costs are more than 10 per cent higher than a preferred provider on the CCG's preferred provider list. The CCG will consider whether any exceptional circumstances apply which would allow it to fund a placement where costs are higher than the 10 per cent threshold (refer to the Annex of this policy). Where there is no placement available on the preferred provider list, the CCG will offer a placement in a care or nursing home outside the preferred list.

6.4 The care provider will invoice the CCG for the commissioned care costs and reasonable accommodation costs associated with the person's assessed needs. If the individual has entered into a voluntary agreement for the private provision of additional services, the provider will invoice the individual separately for these.

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6.5 If the provider refuses to invoice separately it could be considered unfair under Consumer Law and the CCG will not be able to purchase care at this home. The individual or their family or representative will be advised that they need to consider other homes.

7. CONTINUING HEALTHCARE FUNDED PACKAGES OF CARE AT HOME

7.1 People who are eligible for CHC may have a complexity, intensity, frequency and unpredictability in their health needs which can present challenges to the safe delivery of care in their homes. Unless there are exceptional circumstances (refer to the Annex of this policy), the CCG does not have the financial resources to provide a safe and effective 'hospital at home' service where the cost of doing so is more than 10 per cent higher than providing the same care in a care or nursing home.

7.2 When commissioning packages of care that meet an individual's assessed needs, the CCG can take into account comparative costs and the available financial resources. Any changes to a care package must be reasonable and proportionate, and any negative impact on an individual's assessed needs must be considered before a change is made. Where a change is unavoidable, the impact must be assessed and managed with appropriate steps taken to lessen it.

7.3 The CCG commissions services that take into account accessible support and/or supervision and which utilise all commissioned service provision, including primary care, secondary care, community services and, when available, assistive technology.

7.4 The CHC team will take account of the following factors when considering whether or not to commission a care package:

a. The individual's views and those of their family or representative of the benefit to the individual of living at home.
b. The likely impact on the individual of any potential move, including psychological, emotional, personal, social and developmental needs.
c. The preference of the individual to die at home when they have an advanced, progressive, incurable illness.
d. Whether the location of the placement is close to family members who play an active role in the life of the individual.
e. The cultural or linguistic needs of the individual.
f. The needs of individuals placed out of area before they became eligible for NHS CHC.
g. Length of stay in the existing placement.
h. Consideration of the likely length of the care package and what change in needs might trigger the need to relocate to alternative provision.
i. Availability and suitability of alternative care arrangements and the long-term sustainability of these alternative arrangements.
j. The availability of contingency or replacement services if the care package breaks down.
k. The extent to which care can be delivered safely and without undue risk to

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the person, the staff or other members of the household (including children).

l. The acceptance by the CHC team and each person involved in the person's care of any identified risks in providing care and the person's acceptance of the risks and potential consequences of receiving care at home.
m. Where an identified risk to the care providers or the person can be minimised through actions by the individual or their family or representative, those individuals agree to comply and confirm in writing they agree with the steps required to minimise any identified risk.
n. The individual's GP agrees to provide primary care medical support.
o. The willingness and ability of family, friends or informal carers to provide elements of care where this is part of the care plan, and the agreement that no individual should be under pressure to offer such support, and the CCG does not make assumptions about any individual, group or community being available to care for family members.
p. The cost of providing the care at home in the context of cost effectiveness with other comparable services.
q. Whether the higher cost is reasonable, taking into account local market rates.

7.5 In most circumstances, CCG staff will work with the individual and/or their family or representative to identify a range of potential locations and care options, which are appropriate to meeting the individual's reasonable assessed needs. The CCG will communicate those potential options to the individual and any family member or representative identified by the individual.

7.6 However, there may be factors that indicate that it would not be clinically appropriate to provide care in a person's home. For example, home care packages in excess of eight hours per day indicate a high level of need, which may be more appropriately met within a care home. These cases would be carefully considered and a full risk assessment undertaken.

7.7 It is likely to be easier to provide waking night care to a person in a care or nursing home. The need for waking night care indicates a high level of support day and night.

7.8 A care or nursing home may be more appropriate for people who have complex and high levels of need. Care or nursing home placements benefit from direct oversight by registered professionals and the 24-hour monitoring of people.

7.9 If the clinical need is for registered nurse direct supervision or intervention throughout the 24 hours, the care would often be expected to be provided within a care or nursing home. This would include the requirement for 1-2 hourly intervention and/or monitoring for turning, continence management, medication, feeding, manual handling or for the management of significant cognitive impairment.

7.10 There are specific conditions or interventions that it would not generally be appropriate to manage in a home care setting. These include but are not restricted to: continual invasive or non-invasive ventilation or the management of grade four pressure areas.

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7.11 In every case, a detailed consideration and costing of the person's needs and how those needs will be met in different settings will be considered and a balance sheet analysis conducted.

7.12 Each assessment will consider the appropriateness of a home based package of care, taking into account the range of factors in paragraph 36 of this policy and underpinned by the principles in paragraph 13.

7.13 In these circumstances, the CCG will undertake an assessment of the care options and costs to determine the appropriateness of a home care package.

8 CAPACITY

8.1 If a person is assessed as lacking capacity, as defined in the Mental Capacity Act 2005, to make a decision about the location of their CHC package, the CHC team will commission the most cost effective and safest care available based on an assessment of the person's best interests. This will be carried out in consultation with the following:

a. Any appointed advocate.
b. Any attorney under a Lasting Power of Attorney, which does not authorise the attorney to make a decision by themselves as to where the person should live.
c. A Court Appointed Deputy whose terms of appointment do not authorise them to make a decision by themselves as to where the person should live.
d. Family members.
e. Any other person who should be consulted under the terms of the Mental Capacity Act 2005 Code of Practice.

8.2 If there is a significant dispute between any of those referred to in the above paragraph about where the person should live, the CCG should take advice about whether the matter should be referred to the Court of Protection.

8.3 Alternatively, if the terms of a Lasting Power of Attorney or Deputyship grant authority for the Attorney or Deputy to make decisions about where a person lives, the CCG will advise the Attorney or Deputy on what they consider to be the most appropriate placement. The Attorney or Deputy will then decide whether to accept that placement as being in the person's best interests.

9 AGREEMENT TO FUND

9.1 The authorisation for the commissioning and funding of packages of care lies with the CCG. Subject to the limits of their delegated financial authority, the decision about the package of care to be offered will be made by an Integrated panel, which will include the Clinical Lead and a senior clinical manager in that team ("CHC Team"). If the individual or their family or representative identifies a care option that falls outside of this policy, CCG staff will meet with the individual, their family or a representative to consider the care options available and to discuss whether any

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exceptional circumstances should be applied. The Integrated Panel will then consider the options available and any exceptional circumstances alongside the information provided to them.

9.2 The CCG can offer individuals the opportunity to have their own Personal Health Budget (PHB). A PHB is an amount of money to support someone's health and wellbeing needs, which is planned and agreed between the person, or their representative, and the CCG. Individuals eligible for NHS CHC have the right to request a PHB if their care is to be provided in a community setting, including in their home. Individuals placed in a care or nursing home will not receive a PHB. A PHB is based upon a personalised care and support plan, which sets out an individual's health and wellbeing needs, the outcomes they wish to achieve, the amount of money available and how it will be spent.

10 REVIEW

10.1 The care package will be reviewed after the first three months and then annually, as a minimum requirement, alongside the CHC review to ensure that it is still meeting the person's needs at that time.

10.2 If the review identifies that the individual's needs have changed to an extent that his or her care package may need a significant adjustment and increase to the weekly cost of care, the care package will be reviewed and other options will be explored following consideration of the factors outlined in paragraph 36. This will not apply to increases in cost during a single period of up to two weeks that are required to cover either an acute episode of ill health or for end of life care to prevent a hospital admission.

10.3 Individuals and their family or representative should be aware that there may be times where it will no longer be appropriate to continue to provide care at home. For example, where deterioration in the person's condition may result in the need for clinical oversight and 24-hour monitoring that can only be provided in a care or nursing home.

10.4 Any need to change the location of care will be discussed with the individual and their family or representative and the principles set out in this policy will be followed, including the consideration of exceptional circumstances.

11 APPEALS

11.1 If an individual, family member or representative wishes to appeal against the location of the package of care which has been offered, on the basis that they believe they have exceptional circumstances, they should make their appeal and submit any further supporting evidence within 28 days of receiving the decision. The appeal should be addressed to the CCG's Continuing Healthcare Team.

11.2 When an appeal is received, it will be formally acknowledged by a letter that explains the process.

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11.3 An appeals panel consisting of senior clinicians and social workers of the Oldham Cares which will hear the appeal. A decision taken by the Integrated Panel will not be reviewed on the grounds that the individual or family or representative disagrees with the decision. Appeals are not a re-hearing of the case or the decision itself, and panel decisions will only be reviewed on one or more of the following grounds:

I. Procedural inaccuracies and/or inconsistencies (i.e. the procedures outlined in this policy were not applied correctly or consistently when the decision was made).

II. Irrationality (i.e. relevant factors were not taken into account or irrelevant factors were not excluded when the decision was made).

III. Illegality (i.e. the decision making panel acted outside of its authority or the decision does not comply with the law).

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ANNEXE: EXCEPTIONAL CIRCUMSTANCES

In considering the care to be offered under this policy, including any exceptional circumstances, the CCG has referred to the DHSC's national CHC framework. The national framework takes account of CCGs' legal obligations, and CCGs should refer to the sections titled "Higher cost care packages" (paragraphs 279-290) and "Supporting individuals eligible for NHS Continuing Healthcare in their own home" (paragraphs 291-295); in particular paragraph 293 and the Practice Guidance in paragraphs 45 and 46.

The CCG has agreed that in an attempt to balance these different interests it will be prepared to support a package of care that keeps a person in their own home, provided the anticipated cost to the CCG does not significantly exceed the anticipated cost of a care package delivered in an alternative appropriate location, such as a care or nursing home.

The CCG will generally not fund a home care package if the cost of doing so is more than 10 per cent higher than the same care provided in an alternative appropriate location, such as a care or nursing home. However, the CCG will consider whether any exceptional circumstances apply which would allow the CCG to fund a placement above the aforementioned 10 per cent threshold.

In addition, the CCG will generally not fund a care or nursing home package where the cost of doing so is more than 10 per cent higher than a preferred provider care or nursing home. However, the CCG will consider whether any exceptional circumstances apply which would allow the CCG to fund a placement where costs are above the aforementioned 10 per cent threshold.

Exceptionality would be determined on a case-by-case basis. Exceptionality is defined as:

- Are the individual's needs significantly different to other individuals with the same or similar condition? and if so;
- Will the individual derive significantly more from the additional or alternative services in comparison to other individuals with the same or similar condition?

At all times, individuals with capacity to make decisions about their residence, care and treatment retain their right to decline any offer made by the CCG and to make and fund their own private arrangements. The CCG recognises that exceptional circumstances may require exceptional consideration, but will retain its obligation to make the best use of NHS financial resources on behalf of taxpayers.

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